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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

In Re:	)	Case No. 99-31460
	)	Chapter 13
CHARLES W. WALKER,	)	
	)	
Debtor(s).	)	
_____	)	

**ORDER GRANTING TRUSTEE'S OBJECTION TO SECURED CLAIM  
OF HUNTING RIDGE HOMEOWNERS' ASSOCIATION**

This matter is before the court on Trustee's objection to the secured status of the claim of Hunting Ridge Homeowners' Association (hereafter "Hunting Ridge"). The court has concluded that the Trustee's objection must be sustained:

1. The debtor owned real estate located in Hunting Ridge Condominiums. A "Declaration of Hunting Ridge Condominiums" ("declaration") is recorded within the property's chain of title. This declaration contains language which purports to grant a lien to Hunting Ridge to secure funds for future assessments levied against the owner of such property for community expenses of the Homeowners' Association.

2. Prior to September 16, 1996 Hunting Ridge validly charged assessments for community expenses against the debtor and these assessments remain unpaid. On September 16, 1996 a claim of lien

for such unpaid assessments was filed properly with the Clerk of the Superior Court in Mecklenburg County pursuant to N.C. Gen Stat. § 47C-3-116. Subsequent to September 16, 1996, further assessments accrued. No claim of lien was filed with respect to the later assessments. All the assessments remain unpaid.

3. On June 16, 1999 debtor filed for relief under Chapter 13 of the Bankruptcy Code.

4. On July 19, 1999 Hunting Ridge filed a second claim of lien of the Clerk of Superior Court regarding the post-September 16, 1996 assessments.

5. Hunting Ridge filed a proof of claim in the debtor's bankruptcy case which asserts a secured claim for both the pre- and post-September 16, 1996 assessments that arose prior to the debtor's bankruptcy filing. The Trustee has objected to the portion of the claim that asserts secured status for the post-September 16, 1996 assessments for which no statutory claim of lien was filed until after the bankruptcy. The Trustee argues that the July 1999 claim of lien was filed in violation of the automatic stay and is void pursuant to 11 U.S.C. § 362. The court agrees with that position.

6. Hunting Ridge tenders two arguments regarding the secured status of the challenged assessments. First, it argues that the

lien securing these assessments was perfected prior to the filing of the bankruptcy petition by recording the declaration within the chain of title. Second, Hunting Ridge argues that it has a statutory lien that can be perfected properly post petition pursuant to § 362(b)(3) of the Code.

7. The argument that the mere filing of its declaration created a lien on the debtor's property fails for two reasons: (a) no debt existed at the time the declaration was filed; and (b) state statutes provide the exclusive method for creating a lien for these assessments.

(a) A purported lien must secure a valid debt in order to be valid. See, Walston v. Twiford, 248 N.C. 691, 105 S.E.2d 62 (1958) (mortgage lien). No debt existed at the time of recording which would be secured by such a provision. No assessments were due at that time.

(b) N.C. Gen. Stat. § 47C-3-116 et seq. provides the exclusive method for creating a lien on real property for unpaid homeowner's assessments. It sets out clearly and specifically how such liens are to be perfected and its plain language demonstrates that it is the exclusive method of perfecting condominium assessment liens. The N.C. Commentary on this statute supports this conclusion by stating: "This section ... follows previous

North Carolina law by requiring that liens of the owner's association must be recorded to be perfected...."

8. Hunting Ridge also asserts that § 47C-3-116 allows the creation of an inchoate lien that is perfected when the assessments come due. This argument fails because the claim of lien does not qualify for the exception of § 362(b)(3).

9. Section 362(b)(3) provides an exception to the automatic stay as follows:

... of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;...

10. The only potentially applicable exception in this case is § 546(b)(1)(A). This exception allows post petition perfection of liens which, under generally applicable law, would be perfected after lienholder has already perfected his interest. In this case however, this "relation back" does not apply because no lien is created by N.C. Gen. Stat. § 47C-3-116. No lien is created under this statute until a claim of lien has been filed properly in the Clerk's office. Further, subsection (b) of the state statute shows that another lienholder would have priority if it recorded a lien prior to the filing of the claim of lien by Hunting Ridge in this

case. Since the Trustee would have the same rights as a judgment creditor under § 544, generally applicable law would not allow relation back. Consequently, § 362(b)(3) does not provide an exception from the automatic stay for which Hunting Ridge can qualify.

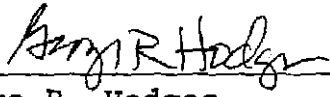
11. Because Hunting Ridge's claim of lien was filed post petition in violation of the automatic stay, it is void and not effective to perfect its lien.

12. Consequently, Hunting Ridge is not entitled to a secured claim for post-September 16, 1996 assessments. It is entitled to a secured claim for those amounts subject to its September 16, 1996 claim of lien; and a general unsecured claim for assessments that accrued thereafter (but prior to the debtor's bankruptcy).

It is therefore **ORDERED** that:

1. The Trustee's objection to the secured claim of Hunting Ridge Condominium Homeowners' Association is sustained and that secured claim for post-September 16, 1996 assessments is denied;  
and

2. The claim of Hunting Ridge Condominium Homeowners' Association for assessments against the debtor for community expenses that arose after September 16, 1996 shall be treated as unsecured for the purposes of this bankruptcy proceeding.

  
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George R. Hodges  
United States Bankruptcy Judge